April 18, 2011

Cindy Mann, J.D.
Deputy Administrator and Director
Center for Medicaid, CHIP and Survey & Certification
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop: S2-26-12
Baltimore, MD 21244

Re: Confidentiality Protections for Adolescents

Dear Cindy:

We the undersigned organizations write to ask that CMS use its authority to provide guidance to state Medicaid programs, possibly in the form of a Dear State Medicaid Director Letter, about the need to assure that the confidentiality of sensitive services for adolescents are protected. Specifically, we are concerned that Medicaid programs' use of explanation of benefits (EOBs) as a fraud detection tool is not required and undermines adolescents' confidentiality. We hope that CMS will encourage states to adopt different tools or establish certain exemptions in the use of EOBs to better preserve the reasonable expectation of confidentiality for adolescents ages 12 to 21.

As you well know, confidentiality is among the foremost factors in determining whether adolescents will seek necessary health care services, including screening and treatment for sexually transmitted diseases, family planning, and mental health and substance abuse screening and treatment. Multiple provider groups, including the AAP, AACAP, SAHM, and ACOG all have formal policy statements supporting adolescents' ability to receive confidential health care services. Significantly, too, most states recognize the importance of adolescent confidentiality and have given them the legal right to obtain certain services -- usually STD services -- independently without parental consent.

State Medicaid programs, however, may undermine adolescent confidentiality by sending home EOB statements. Because EOBs generally list the recipient's name, services provided, a description of the services, dates of service, and providers' information, parents reading these statements would then have knowledge of services an adolescent received, regardless of whether the adolescent had the legal right to consent for the service independently. Although Medicaid MCOs in the majority of states do not send home EOBs whenever a service is provided and a claim filed, MCOs do routinely send EOBs home in the handful of states that require them to do so. In addition, most state Medicaid agencies use EOBs for fee-for-service and PCCM recipients in an effort to comply with the federal verification regulation enacted to combat fraud. Usually, each month or quarter they send a small sample of recipients -- 400 to 500 -- an EOB or similar document like the Recipient Explanation of Medical Benefits or a Medical Service Verification Letter each month or quarter. These statements list the services provided and request that the recipient confirm receipt of the services. Our analysis of state practices showed that, while about half of states send the statements directly to the adolescent, the other half send them to the parent or head of the household.

Combating fraud is essential to protecting the integrity of the Medicaid program and ensuring that public funds are not used inappropriately. However, the federal verification regulation requires only that states "have a method to verify whether services reimbursed by Medicaid were actually furnished to recipients;" it does not specify that EOBs or any specific method be used. To comply with the regulation states can use methods other than EOBs -- such as retrospective provider record reviews -- that do not compromise adolescent confidentiality. We encourage CMS to inform states about alternative methods. For Medicaid programs that choose to continue using EOBs, CMS should urge that every effort be made to align their EOB policies with their states' minor consent laws by excluding from the EOB the services for which their states allow minor consent. For example, if a state gives a minor the right to consent independently to STD screening and treatment or for mental health treatment, those services should not be listed on the EOB for consumer verification. CMS should also encourage the use of similar confidentiality protections for adolescents in separate CHIP programs administered by Medicaid agencies.

We would welcome the opportunity to work with you on protecting adolescent confidentiality for sensitive services and look forward to hearing from you. If you require any additional information or have any questions, please contact Harriette Fox at The National Alliance to Advance Adolescent Health, by email hfox@thenationalalliance.org or by phone 202-223-1500.

Advocates for Youth
American Academy of Pediatrics
American College of Preventive Medicine
American Social Health Association
CityMatCH
Mental Health America
National Assembly on School-Based Health Care
National Association of County and City Health Officials
National Association of Pediatric Nurse Practitioners
National Association of Social Workers
National Coalition of STD Directors
National Family Planning & Reproductive Health Association
National Latina Health Network
Partnership for Prevention
Society of Adolescent Health and Medicine
The National Alliance to Advance Adolescent Health
The Point, Charleston County Public Health Department
The SPOT, Washington University School of Medicine